

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

VALLEY BOYS, INC.,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

8:14CV3148

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Statement of Objections to Magistrate Judge's Order (Filing No. 65) ("Objection"), filed by Defendant Allstate Insurance, Co. ("Allstate"). For the reasons set forth below, the Objection will be sustained; Magistrate Judge F.A. Gossett III's Text Order (Filing No. 63) ("Text Order") will be set aside; the Amended Complaint (Filing No. 64) ("Amended Complaint"), filed by Plaintiff Valley Boys, Inc. ("Valley Boys"), will be stricken; Allstate's Answer to Amended Complaint (Filing No. 66) will be stricken; Allstate will be granted leave to file its opposition brief within fourteen days of the date of entry of this order; and Valley Boys will be granted leave to file its reply brief within seven days of the date Allstate files its brief.

BACKGROUND

Valley Boys filed a Motion for Leave to File Amended Complaint ("Motion") (Filing No. 62) on March 25, 2016, to add claims. Valley Boys stated in the Motion that it conferred with Allstate, and Allstate "objected to the same." (*Id.* ¶ 5.) The Motion also stated that should Judge Gossett deny the Motion, Valley Boys may "dismiss its cause of action and re-file, as the Statute of Limitation has not run on its causes of action." (*Id.* ¶ 3.) Valley Boys did not file a brief supporting the Motion, but stated in the Motion that

it should be granted because “[t]he parties will suffer no prejudice” and doing so was “in the interest of judicial economy.” (*Id.* ¶¶ 2 & 6.) On the same day, Judge Gossett entered the Text Order granting the Motion. (Filing No. 63.)

Allstate filed its Objection on April 8, 2016, asserting that the entry of the Text Order did not afford Allstate fourteen days to file a brief opposing the Motion as provided by NECivR 7.1(b)(1)(B). Allstate also made several substantive arguments as to why Valley Boys should not be granted leave to amend. (Filing No. 65.) Valley Boys did not respond to the Objection, but filed the Amended Complaint on April 11, 2016.

STANDARD OF REVIEW

When a party objects to a magistrate judge's order on a nondispositive pretrial matter, a district court may set aside any part of the order shown to be clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); see 28 U.S.C. § 636(b)(1)(A). “A finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Chase v. Comm’r*, 926 F.2d 737, 740 (8th Cir. 1991) (citing *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). “An order is contrary to law if it fails to apply or misapplies relevant statutes, case law, or rules of procedure.” *Haviland v. Catholic Health Initiatives-Iowa, Corp.*, 692 F. Supp. 2d 1040 (S.D. Iowa 2010) (internal quotation marks omitted).

DISCUSSION

NECivR 7.1(b)(1)(B) states that “[a] brief opposing [a nondispositive] motion must be filed and served within 14 days after the motion and supporting brief are filed and served.” Allstate communicated to Valley Boys that it intended to oppose Valley Boys’

Motion, and Valley Boys stated so in its Motion. Because the Motion was granted before the expiration of the fourteen-day period in which Allstate could file a brief in opposition, the Court will set aside the Text Order and grant Allstate leave to file its brief. The Court will not address Allstate's substantive arguments as to why leave to file an amended complaint should not be granted, as those arguments are more appropriately considered by Judge Gossett in his review of the Parties' forthcoming briefs on the Motion.

Allstate will be given fourteen days from the date of the entry of this order to file its brief in opposition to the Motion, and Valley Boys may file its reply brief within seven days after the filing of Allstate's brief. Because Valley Boys has filed its Amended Complaint, and Allstate has filed an Answer to the Amended Complaint, those filings will be stricken. Accordingly,

IT IS ORDERED:

1. Defendant Allstate Insurance, Co.'s Statement of Objections to Magistrate Judge's Order (Filing No. 65) is sustained;
2. The Text Order Granting the Plaintiff's Motion for Leave to File an Amended Complaint (Filing No. 63) is set aside;
3. The Amended Complaint (Filing No. 64) is stricken;
4. The Answer to Amended Complaint (Filing No. 66) is stricken;
5. Defendant Allstate Insurance, Co. is granted leave to file its brief in opposition to the Motion for Leave to File Amended Complaint (Filing No. 62) within fourteen days of the date of entry of this order; and
6. Plaintiff Valley Boys, Inc. is granted leave to file its reply brief within seven days of Defendant's filing of its opposition brief.

Dated this 8th day of May, 2016.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge